THE HONOURABLE SRI JUSTICE N.V.RAMANA

Writ Petition No.24610 of 2005

Dated: 21-12-2006

Between:

M/s.Hindustan Photo Films Mfg. Co. Ltd.,
Indunagar, Udhagamandlam, The Nilgiris-643 005,
Tamilnadu – represented by its Personal Manager,
E.Rajavelu, S/o K. Elayappa Gounder..

…..PETITIONER

AND

The Regional Labour Commissioner,
(Central) – 1, ATI Campus,
Vidyanagar, Hyderabad and others.

….RESPONDENTS

THE HONOURABLE SRI JUSTICE N.V.RAMANA

W.P.No.24610 of 2005

ORDER:

This writ petition is filed against the orders dated 14-9-2005 of the Appellant Authority Under the Payment of Gratuity Act, 1972 and Regional Labour Commissioner (Central), Hyderabad (for short the 1st respondent Authority) passed in Appeal No.36/15/2005 confirming the orders dated 30-9-2004 of the Controlling Authority under the Payment of Gratuity Act, 1972 & Assistant Labour Commissioner (Central), Hyderabad (for short the 2nd respondent Authority) passed in application No.7 of 2004. By the said orders the 1st respondent Authority apart from confirming the order of the 2nd respondent Authority further entitled the respondents 3 to 7/employees for interest on delayed payment of gratuity from the date it became due @ 10% per annum simple interest till the date of payment as per provision under Section 7 (3-A) and Rules thereunder.

The brief facts leading to the filing of the writ petition are as follows:

Initially the respondents/employees approached the 2nd respondent Authority under Section 7 (4) (b) of the Payment of Gratuity Act, 1972 (for short the Gratuity Act, 1972) for payment of difference of gratuity payable by the petitioner/company, which was allowed by the 2nd respondent Authority on 30-9-2004. Aggrieved by the order dated 30-9-2004 of the

2nd respondent Authority, petitioner preferred an appeal under Section 7 (7) of the Gratuity Act, 1972 before the 1st respondent Authority which by the impugned orders confirmed the orders of the 2nd respondent Authority, which is the subject matter of the writ petition.

Learned counsel for the petitioner mainly contended that both the 2nd and 1st respondent Authorities have wrongly presumed that the interim relief granted to the workmen as part of the wages. The petitioner/company was declared as a sick unit in the year 1996 and as per the settlement entered into between the petitioner/company and the employees in 1997 the petitioner/company agreed for payment of 5% interim relief in the pay only with the sole object to achieve the stipulated target in production and that hike of 5% interim relief cannot be treated as part of wages or can it be computed for the purpose of payment of gratuity. Counsel further contended that in January 2000 5% of the incentive was paid to the workmen under the settlement entered into by the petitioner/company and the employees under Section 18 of the Industrial Disputes Act. Therefore the amounts so paid could not be reckoned for computing provident fund payments including gratuity.

Learned counsel for the respondents/employees relying upon the judgment of the Madras High Court in ***Anglo-French Textiles Ltd., Pondicherry Vs. Labour Court, Pondicherry and Another***[1] contended that 5% interim relief given by the petitioner/company is part of wages and can be taken for computing the gratuity. Counsel further submitted that the interim relief generally will be granted pending wage revision and is included in the basic pay for calculating allowances etc., and same cannot be termed as incentive.

Counter affidavit is filed by the respondent No.7/employee on his behalf and on behalf of respondents 3 to 6 reiterating *inter alia* that the interim relief is not an incentive and is part of wages therefore the respondents are entitled to claim arrears of payment of gratuity including interest. The averment that the company is going sick and 5% of incentive was given to the employees to boost the production to come out of the financial hardship is denied. It is stated that in fact the company was not in financial hardship to implement the orders of the

1st and 2nd respondent Authorities. It is stated that in fact the company deposited a sum of Rs.91,787/- before the 1st respondent Authority for disbursing difference in wage revision and thereafter the petitioner/company has approached this Court and obtained stay on 18-11-2005.

Heard the learned counsel for the petitioner as also the counsel for the respondents/employees and perused the material on record.

Though the counsel for the petitioner stated that in terms of the settlement agreement between the petitioner and the respondents/employees the amount of 5% of interim relief (termed as incentive by the petitioner) is paid to the respondents/employees, but no such settlement agreement is produced before this court. Even assuming that such settlement agreement exists, still that will be contrary to the statute and Section 2 (s) of the Gratuity Act, 1972. Section 2 (s) of the Gratuity Act, 1972 defines "Wages" which reads as under:

> " "Wages" means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employment and which are paid or are payable to him in cash and includes dearness allowance but does not include and bonus, commission, HRA, overtime wages and any other allowance."

Thus it is clear from Section 2 (s) of the Gratuity Act that 5% interim relief given to the respondents/employees is part of the wages inasmuch as it does not fall under any of the excluded category as defined under Section 2 (s) of the Gratuity Act, 1972 namely, Bonus, Commission, House Rent Allowance, Over Time Wages and other allowance. It is clear from the averments in the writ affidavit and the contention of the learned counsel for the petitioner that the interim relief of 5% was given when there was a ban for revision of wages as the company was going sick. Therefore, the 5% interim relief given by the petitioner/company has become part of the wages and there cannot be any dispute in that regard.

Learned counsel for the respondents/employees relied upon the Judgment in ***Anglo-French*** supra to contend that the interim relief/incentive becomes part of the pages. The relevant portion of the

judgment reads as under:

> "Wages' means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employment and which are paid or are payable to him in cash and includes dearness allowance, but does not include any bonus, commission, house rent allowance, overtime wages and any other allowance."
>
> Thus, it is clear that the definition excludes only bonus, commission, house rent allowance, over time wages and any other allowance and not incentive wages. Consequently, reading the definition as it is , it will mean that incentive wages are included in the definition of "wages" as contained in section 2 (s) of the Act. The learned counsel for the appellant sought to contend that with reference to the definition of the term "basic wages" as contained in the Employees' Provident Funds act, the Supreme Court has held that incentive wages would be covered by the expression "bonus". The learned Judge has stated that the definitions are not in *pari material* for the simple reason that the definition in the Payment of Gratuity Act, 1972, is of the term "wages", while the definition in the Employees' Provident Funds Act is admittedly of the term "basic wages" and equally admittedly there is a fundamental difference between the two concepts."

It is seen from the Judgment in ***Anglo-French*** that the High Court of Madras while considering the minimum wages under Section 2 (s) of the Gratuity Act, 1972 held that the wage include even incentive wages paid to an employee. The judgment in ***Anglo-French*** squarely applies to the case on hand. Admittedly, petitioner/company has given 5% in the name of interim relief, which is nothing but an incentive and can be included in the wages as per section 2 (s) of the Gratuity Act, 1972. The 2nd respondent Authority having regard to Section 2 (s) of the Gratuity Act, 1972 held that the 5% interim relief granted by the petitioner to the respondents/employees has become part of wages and rightly dismissed the claim of the petitioner/company, which was rightly confirmed by the 1st respondent Authority by the impugned order. I see no irregularity or illegality in the impugned order for interference.

For the aforementioned reasons, the writ petition fails as being devoid of merit and the same is accordingly dismissed. However interest of 10% per annum granted by the 2nd respondent Authority on the amounts due payable towards difference of gratuity is reduced to 9% per annum. No costs.

(N.V. RAMANA, J.)

Date:21-12-2006.

grk/tvk

THE HONOURABLE SRI JUSTICE N.V.RAMANA

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[1] Factories Journal Reports Vol. 58 page 252